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November 5, 1993

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Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

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NOV - 5 1993

Re: Reply Comments of Pacific Telecom, Inc. - RM - 8334. FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Mr. Caton,

Enclosed are an original and four copies of the Reply Comments of Pacific Telecom, Inc. in the above referenced proceeding. In the event there are any questions concerning this matter please contact the undersigned.

Very truly yours,

Brian D. Thomas
Assistant Vice President

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of the)
)
AMERICAN TELEPHONE AND)
TELEGRAPH COMPANY)
Petition for the Establishment)
of Additional Standards to Govern) RM - 8334
Study Area Boundary Changes in)
Connection with the Transfer of)
Service Territories Between or)
Among Local Exchange Carriers)

**REPLY COMMENTS OF
PACIFIC TELECOM, INC.**

Pacific Telecom, Inc. ("PTI"), on behalf of its local exchange subsidiaries operating as PTI Communications, submits its reply comments in the above-captioned matter. In its Petition for Rulemaking, filed September 3, 1993, AT&T asked the Commission to adopt additional standards for evaluating requests for waiver of its rules freezing study area boundaries as they existed on November 15, 1984, in cases involving sales or transfers of exchanges by local companies. AT&T maintains that the Commission will receive many complex waiver requests resulting from a growing number of transactions involving high cost local exchanges. AT&T suggests adopting criteria which give preeminent weight to whether or not the transaction will increase the Universal Service Fund ("USF").

Initial comments filed in this proceeding on October 20, 1993, overwhelmingly support PTI's position that the Commission should deny AT&T's petition. The comments provide

further evidence that AT&T's rule proposal is inconsistent with longstanding FCC and Joint Board policy, that AT&T makes exaggerated and inflammatory claims to support the need for the rulemaking, and that AT&T has failed to follow the Commission's procedural rules in filing its petition.

The parties' comments confirm that AT&T completely misconstrued the Commission's purpose in freezing study area boundaries in 1984, and that AT&T's proposal would undermine the policies that the Commission furthered by changing the definition. While AT&T suggests that the Commission froze study area boundaries to restrain USF growth that could be caused by local company acquisitions of high cost exchanges, this is not true. As the National Rural Telecom Association ("NRTA") states, the Commission froze study area boundaries to prevent companies from setting up high cost exchanges within their existing service territories to maximize high cost support.¹ Contrary to AT&T's claims, the Joint Board's purpose in rejecting the previous study area definition was to remove companies' disincentive for purchasing high cost exchanges or expanding service into high cost areas.²

Other parties' comments demonstrate that the Commission and the Joint Board have never changed the federal policy of encouraging purchases of high cost local exchanges. As the National Telephone Cooperative Association ("NTCA") points out, the requirement that a petitioner for a study area waiver demonstrate that the waiver will have "no adverse effect" on

¹ Comments of NRTA, filed Oct. 20, 1993, p. 2.

² Id. at p. 3 (citing MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-256, Recommended Decision and Order, 49 Fed. Reg. 48325 (1984), ¶ 66; recommendations adopted, Decision and Order, F.C.C. 84-637 (released Dec. 28, 1984)).

the Universal Service Fund has never been adopted by the Commission, but was imposed by the Common Carrier Bureau.³ As NTCA says, the Bureau has not yet defined "adverse," but has approved several waivers on the basis that the impact was de minimis.⁴ To the extent "adverse" means not de minimis, NTCA says, the Bureau has changed the rule from one designed to prevent manipulation to one designed to prevent infrastructure improvements in cases where there is no manipulation.⁵ This action exceeds the Bureau's delegated authority.⁶

NRTA concurs with NTCA's conclusions. NRTA shows that Common Carrier Bureau orders issued under delegated authority cannot change the established Joint Board and Commission policy of encouraging purchases of high-cost exchanges.⁷ Under the FCC's rules, Common Carrier Bureau delegation does not extend to novel questions that cannot be resolved under existing precedents.⁸

NTCA also shows that the Commission should not adopt new standards denying any boundary changes that increase the USF's size because they would be inconsistent with the Commission's existing waiver procedures. Currently, the Commission may change existing study area boundaries for good cause shown.⁹ While the Commission may define more fully the

³ Comments of NTCA, filed Oct. 20, 1993, p. 4 (citing U.S. West Communications and Gila River Telecommunications, 7 F.C.C. Rcd. 2161 (1992)).

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Comments of NRTA, at p. 4.

⁸ Id. (citing 47 C.F.R. § 0.291(a)(2)).

⁹ Comments of NTCA, at p. 6.

criteria that it utilizes in granting waivers, it cannot undo its own rules by establishing criteria that undermine the fundamental policies that it seeks to promote in the rules.¹⁰ Also, it may not use the waiver process to create new policy.¹¹

The parties' comments also show that AT&T's claims supporting the need for a rulemaking are exaggerated and inflammatory. For example, NRTA eviscerates AT&T's claim that small LECs pay premium prices for exchanges because they will recover the excess cost through the Universal Service Fund, as unreliable and untrue.¹² The Commission's accounting rules require that companies treat acquisition adjustments below the line.¹³ AT&T's false and misleading statements cloud fundamental issues concerning the Commission's universal service policy. NRTA emphasizes that acquisitions of high-cost exchanges improve service for rural customers whose facilities have been neglected under large LEC ownership.¹⁴

The comments also show that AT&T's petition should be dismissed for failure to comply with the Commission's rules. U.S. West points out that AT&T fails to include any proposed rules with the petition, in violation of 47 C.F.R. § 1.401(c).¹⁵ Because AT&T has not submitted the text of proposed rules and has not provided sufficient detail for the Commission to formulate

¹⁰ Id. (citing Alltel Corp., Inc. v. F.C.C., 838 F.2d 551 (D.C. Cir. 1988)).

¹¹ Id.

¹² Comments of NRTA, at p. 7.

¹³ Id.

¹⁴ Id. at p. 6.

¹⁵ Comments of U.S. West, filed Oct. 20, 1993, p. 4.

its own rules, U.S. West shows, the Commission does not have any proposal to publish for public comment.¹⁶

The Commission should deny AT&T's Petition for Rulemaking for these reasons.

Respectfully submitted,

PACIFIC TELECOM, INC.

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¹⁶ Id. at pp. 4-5.